

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SERVICE OF FILINGS ON OFFICE OF CONSUMER ADVOCATE	DOCKET NO. RMU-01-4
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ORDER COMMENCING RULE MAKING

(Issued May 1, 2001)

Pursuant to the authority of Iowa Code §§ 474.5 and 476.2 (2001), the Utilities Board proposes to adopt the amendments attached hereto and incorporated by reference. These proposed rules amend subrule 199 IAC 1.8(4)"c." The reasons for proposing these amendments are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making, identified as Docket No. RMU-01-4, is commenced for purposes of receiving comments upon the proposed amendments attached to this order.

2. The Acting Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 1st day of May, 2001.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 474.5 and 476.2 (2001), the Utilities Board (Board) gives notice that on May 1, 2001, the Board issued an order in Docket No. RMU-01-4, In re: Service Of Filings On Office Of Consumer Advocate, "Order Commencing Rule Making," to receive public comment on the adoption of revisions to the Board's existing rule 199 IAC 1.8(4)"c" regarding service of documents on the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

Consumer Advocate is charged by statute with several duties, including the duty of representing the public in all proceedings before the Board, see Iowa Code section 475A.2(2). In order to fulfill that obligation, Consumer Advocate is entitled to service of all documents required by statute or rule to be served on parties in proceedings before the Board and of all notices, petitions, applications, complaints, answers, motions, and other pleadings filed pursuant to statute or rule with the Board, see Iowa Code section 475A.5. The Board's rules, specifically 199 IAC 1.8(4)"c," expand on the statutory requirement by requiring that three copies of all notices, motions, or pleadings filed with the Board must be served on Consumer Advocate, either by separate mailing or by separate envelope, if personally delivered.

Despite these provisions, the Board is informed by Consumer Advocate that a significant percentage of all filings with the Board are not served upon Consumer Advocate. Consumer Advocate suggests four possible reasons for this situation and proposes certain amendments to the Board's rules to address the situation.

First, Consumer Advocate notes that the existing rules do not explicitly require service of all documents; instead, they apply only to "notices, motions, or pleadings." Second, the rule does not explicitly state the obligation to serve Consumer Advocate is the obligation of the party, rather than the Board, which may lead some parties to believe the Board provides copies to Consumer Advocate. Third, some new parties may not be aware of Consumer Advocate. Finally, Consumer Advocate suggests that some new parties may only review the specific Board rules with which they are concerned and are therefore unaware of the requirements of paragraph 1.8(4)"c."

Consumer Advocate believes two basic rule changes would improve compliance with the statutory service requirement. First, paragraph 1.8(4)"c" could be amended to explicitly prescribe the duty to serve all documents on Consumer Advocate. Second, every chapter of the Board's rules could be amended by adding an initial statement requiring that every document filed with the Board must be served on Consumer Advocate.

The Board will propose Consumer Advocate's requested amendment to paragraph 1.8(4)"c." Revising paragraph 1.8(4)"c" as shown below would expand the scope of the rule to all documents or other materials filed with the Board. Further, the amended rule would clearly state that it is the obligation of each party,

rather than the Board, to serve Consumer Advocate. These changes will address the first two problems identified by Consumer Advocate.

The Board will not propose the addition of the requested statement to every chapter of the Board's rules. Adding duplicative language to the beginning of each of the 39 chapters of the Board's rules is unlikely to result in benefits that will justify the cost and inconvenience. Parties before the Board who are unaware of Consumer Advocate and who are focused on only the particular rules applicable to their specific situation are just as unlikely to notice a statement at the beginning of each chapter (when the rule they are reading may be 20 or 30 pages away) as they are to miss paragraph 1.8(4)"c." The costs and burdens associated with adding standard language to each chapter outweigh the minimal benefit likely to result. The problems of service by parties who are not aware of the existence of Consumer Advocate should occur only once or twice with each party and can best be addressed as each individual situation occurs.

Finally, the Board proposes to eliminate the requirement that a separate copy of each filing be served on the Board's general counsel. This has proven to be unnecessary.

Any interested person may file a written statement of position on the proposed rules no later than June 19, 2001, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Acting Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

These amendments are intended to implement Iowa Code sections 474.5, 475A.5, and 476.2.

Item 1. Amend 199 IAC 1.8(4)"c" as follows:

c. Parties entitled to service. A party or other person filing a notice, motion, or pleading ~~All parties~~ in any proceeding shall serve the notice, motion, or pleading on all other parties ~~including the general counsel and the consumer advocate, shall be served with all notices, motions, or pleadings filed or issued in the proceeding.~~ A party formally filing any document or other material with the board shall serve three copies on the cConsumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. ~~shall be served three copies, either by separate mailing addressed to~~ The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063, ~~or by separate envelope delivered to the office of consumer advocate.~~

May 1, 2001

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson